

DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR
455 Golden Gate Avenue, Room 4181
San Francisco, CA 94102

ADDRESS REPLY TO:
P.O. Box 420603
San Francisco, CA 94142



August 14, 1995

Melanie K. Wellner, Deputy
County Counsel
County of Nevada
Eric Rood Administration Center
950 Maidu Avenue
Nevada City, CA 95959-8617

Re: Public Works Case No. 95-015
County of Nevada - Chip Seal Program

Dear Ms. Wellner:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California public works laws, and is made pursuant to California Code of Regulations (C.C.R.) § 16001(a) and § 16301. Based upon my review of the documents submitted, and an analysis of the relevant facts as presented, I have determined that the Chip Seal Program of the County of Nevada is a "public works" within the meaning of Labor Code § 1720(a) and § 1772.

The County of Nevada ("County") typically orders two or three trucks per day containing asphaltic emulsion. Under a contract with the County, the contractor purchases the asphaltic emulsion from a refinery, delivers it to the project site and applies it to the road surface using sprayers mounted on the rear of the trucks. County personnel tell the driver the exact rate of application and how wide to spray. Prior to the application, a County person gets in the truck and tells the driver when to start and when to stop the application. County road crews follow behind the truck and spread the rock chips with County-owned spreaders. The contractor's driver leaves the site when the County staff determines the work is completed or when the truck is empty.

Labor Code¹ § 1720(a) defines public works as "Construction, alteration, demolition or repair work done under contract and paid for in whole or part out of public funds." Section 1771 further provides that maintenance² work done under contract

¹ All subsequent statutory references are to the Labor Code unless otherwise specified.

² C.C.R. § 16000, in part, defines maintenance to include: "Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility . . . for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired."

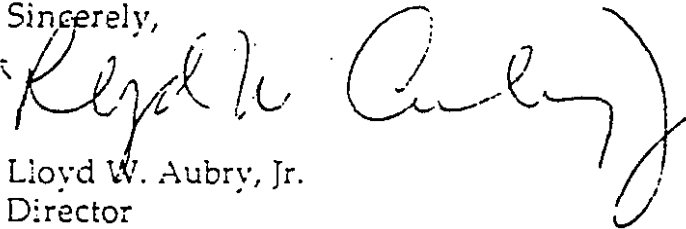
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is public works. Consistent with previous determinations,³ the application of the asphaltic emulsion by the contractor's employees is a public works project because it is maintenance work done under contract and is paid for out of public funds.

In addition, § 1772 states that "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." In applying § 1772, the department has previously determined⁴ that the on-hauling of material to a public works job site by employees of the contractor or subcontractor in the execution of a contract is a public works. In this case, the on-hauling of the asphaltic emulsion by the contractor's employees is being performed under the contract between the County of Nevada and the contractor. Therefore, the on-hauling of the asphaltic emulsions is a public works project under the meaning of § 1772.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Lloyd W. Aubry, Jr.
Director

cc: John Duncan, Chief Deputy Director
Victoria Bradshaw, Labor Commissioner
Dorothy Vuksich, Chief, DLSR
Rulon Kay Cottrell, Chief, DAS
Vanessa L. Holton, Assistant Chief Counsel

³ City of Redlands/Honeywell Corp., PW Case No. 92-029 (May 31, 1994); City of Morro Bay Desalination Plant (Sept. 11, 1991); J.L. Denio Inc. vs. Kern County, PW Case No. 90-054 (Oct. 2, 1990).

⁴ City of South Lake Tahoe - Fire Station Facility, PW Case No. 93-047 (June 6, 1994); Serra High School - Construction of Science Labs for San Diego High Schools, PW Case No. 91-005 (Feb. 28, 1991).